IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5779 of 2006

Jain Vanguard Polybutylene Ltd. ... Petitioner
v/s.
The Union of India & ors. ... Respondents

Mr.Prakash Shah i/by PDS Legal for petitioner.
Mr.V.K. Chaudhari for res.Nos.1, 2 & 4.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 14th September 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith.

3. This Petition seeks to challenge the order dated 30th May 2006 passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai ("Tribunal" for short) wherein the Tribunal has declined to condone the delay of 9 months and 24 days in filing the Appeal.

4. Mr.Shah appearing for the petitioner submitted that the order in original dated 24th July 2000 passed by the Deputy Commissioner of Customs, directed that all goods imported by the petitioner from its foreign suppliers and

associates will be assessed after loading the value by 20% of C.I.F. The petitioner carried that matter in Appeal and the Commissioner of Customs (Appeals), Mumbai, had substituted that order by directing that the amount of US $ 250,000/- is addable to the price of the imported goods on a pro rata basis. Mr.Shah states that the petitioner wanted to test the legality of this order before the Tribunal. He has given an explanation for delay by stating that this order caused a confusion. He has, however, accepted that the order passed by the Commissioner of Customs (Appeals), though subject to a review after three years, will continue to operate until the order is reviewed or until it is altered by the Tribunal.

5. Mr.Chaudhari appearing for the Revenue states that the Tribunal was justified in rejecting the Application for condonation. There was no confusion whatsoever. The petitioner understood the order and it ought to have filed its Appeal in time.

6. We have noted the submissions of both the Counsel. We quite see that the Tribunal has expressed a surprise as to how a careful and

diligent appellant like the present petitioner, did not move the Appeal in time. Even so, not to deny the opportunity to the petitioner, we interfere with the order dated 30th May 2006 passed by the Tribunal. We make it clear that this order is interfered only with a view to afford an opportunity to the petitioner. We further make it clear that it does not make any reflection on the Tribunal or its order otherwise.

7. In view of setting aside the order dated 30th May 2006 passed by the Tribunal, the Application for condonation of delay will stand granted. That will be on payment of costs of Rs.25,000/- to the Revenue. Costs to be paid to the Commissioner of Customs within two weeks. Appeal will stand restored on this costs being paid to the Commissioner of Customs.

8. Rule is made absolute in the above terms. No costs.

9. We make it clear once again that the imports made during the subsistence of the order passed in Appeal will continue to be governed by the terms of that order.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)